

**Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Digital Output Protection Technology)	MB Docket Nos. 04-55, 04-56,
and Recording Method Certifications)	04-57, 04-58, 04-59, 04-60, 04-61,
)	04-62, 04-63, 04-64, 04-65, 04-66,
All Technologies and Recording Methods)	04-68

**COMMENTS PERTINENT TO ALL FILINGS FOR INTERIM CERTIFICATION
SUBMITTED BY THE MOTION PICTURE ASSOCIATION OF AMERICA, INC.,
METRO-GOLDWYN-MAYER STUDIOS INC., PARAMOUNT PICTURES
CORPORATION, SONY PICTURES ENTERTAINMENT INC., TWENTIETH
CENTURY FOX FILM CORPORATION, UNIVERSAL CITY STUDIOS LLLP, THE
WALT DISNEY COMPANY, AND WARNER BROS. ENTERTAINMENT INC.**

The Motion Picture Association of America, Inc. and other parties hereto (“MPAA Parties”) have filed comments in each individual docket in this proceeding, and are particularly grateful for the Commission’s efforts to seek content provider, broadcaster, and other viewpoints in promptly populating a schedule or “table” of approved protected digital output and secure recording technologies. Prompt though careful action to implement the Broadcast Flag is critical to the protection of digital broadcasts from unauthorized redistribution and to the enhancement of the digital transition in broadcasting.

The MPAA Parties are particularly pleased that the Commission’s process has prompted the applicants to devote careful and considered attention to the development and presentation of their technologies and license agreements. Accordingly, we were able to find a number of applications to be ready or virtually ready for approval, and others to be potentially qualified upon modification and/or clarification of the proposals -- qualifications that are not unimportant, but that can be targeted owing to the Commission’s determination to adopt the flag and provide for its prompt implementation in devices.

The MPAA parties are confident that the “interim” nature of this proceeding will not detract the Commission’s attention from the important issues that are raised in those cases where additional modification and/or clarification are appropriate; nor promote premature approval where, after the reply period (or in connection with any subsequent application) , any particular application falls short of the applicable criteria for approval; nor prejudge the outcome of the Commission’s pending inquiry into final criteria. We must note, however, that in all cases the approval of a technology (and accompanying licensees) can have lasting effect, and that several matters pertaining to a change in circumstances after approval have not been addressed in the preceding Order or the Commission’s rules. These include:

- The relationship -- including the effect on content owners, broadcasters, manufacturers, and consumers -- between an interim approval, the considerations underlying the Commission’s determination of final approval criteria pursuant to its still-open FNPRM, and attainment of or retention on the final list or schedule of approved technologies; and
- The effect of a change of circumstances after Interim (or Final) approval -- including the effect on content owners, broadcasters, manufacturers, and consumers-- where a misrepresentation (a) was and (b) was not made during the proceeding. This might include a statement of fact or intent later rendered unattainable, a material change in the technology or licensing terms (both where contractual change management provisions are and are not available or are not followed) , or a failure to issue or enforce (both where third party remedies are and are not available) downstream licenses¹.

Because of the somewhat unusual nature of this proceeding and its relationship with the open FNPRM, we have filed this common statement in each docket to seek the Commission’s guidance on the appropriate manner of pursuing these and related issues, and to provide notice to each applicant of our concern.

¹ In the absence of appropriate and effective licensing on specific, represented, terms to devices that are downstream from Covered Demodulator Products, the Broadcast Flag regulation will amount to nothing more than a requirement that broadcast content make “one hop” before widespread unauthorized redistribution can and will occur, an event that will negate the very purpose and intent of the regulation. The critical nature of the licensing regime is equally important because it limits the scope and nature of devices that must be directly addresses by the Commission, and permits manufacturers of PCs and other multi-purpose devices to voluntarily opt in or out of broadcast protection.

April 6, 2004

Respectfully submitted,

THE MOTION PICTURE ASSOCIATION OF AMERICA, INC.
METRO-GOLDWYN-MAYER STUDIOS INC.
PARAMOUNT PICTURES CORPORATION
SONY PICTURES ENTERTAINMENT INC.
TWENTIETH CENTURY FOX FILM CORPORATION
UNIVERSAL CITY STUDIOS LLLP
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